

**RAICHLE, BANNING, WEISS & STEPHENS**

ATTORNEYS AT LAW

410 MAIN STREET - BUFFALO, NEW YORK 14202-3702

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March 1, 2000

Kevin Matheis
US EPA
Region II
Federal Office Bldg.
111 West Huron Street
Room 1114
Buffalo, NY 14202

Re: Frontier Chemical Royal Avenue Site, et al v. Cahill & Spitzer

Dear Mr. Matheis:

Enclosed is our Petition with Exhibits and the opposing papers of the State, including the Affidavit of Frank Shattuck, the Affidavit of Peter Buechi and the Memorandum of Law.

As you can see from the conclusion of the Memorandum of Law, the position of the Commissioner is that he has unfettered discretion to use the bond funds to fund additional "closure costs" without accounting to the Phase I and Phase II PRP Groups at all.

Very truly yours,

R. William Stephens

RWS\jdp
Enclosures

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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ALBANY
FRONTIER CHEMICAL ROYAL AVENUE
PHASE I PRP GROUP and FRONTIER
CHEMICAL ROYAL AVENUE PHASE II
PRP GROUP

NOTICE OF PETITION

Petitioners

Index No.

-against-

JOHN P. CAHILL, Commissioner of NYS
Dept. of Environmental Conservation, as Trustee
AND
ELIOT L. SPITZER, Attorney General of the
State of New York, as Custodian of certain funds
on deposit

Assigned Judge:

Respondents

SIRS:

PLEASE TAKE NOTICE, that on the annexed Petition of R. William Stephens, verified on the 27th day of December, 1999 and upon the Affidavit of Carol D. Quinn, sworn to the 10th day of September, 1996; Affidavit of David L. Cook, sworn to the 12th day of September, 1996; the Affidavit of Fredric Jakes, sworn to the 9th day of September, 1996; the Affidavit of Carl J. Johnson sworn to the 9th day of September, 1996; the Affidavit of Frank Shattuck, sworn to the 5th day of December, 1996; the Affidavit of Kevin Matheis, sworn to on the 6th day of December, 1996; and upon a certain bond dated May 10, 1991, an application will be made to a Special Term, Part , of this Court to be held at the Courthouse hereof, located at Albany County Courthouse, Room 102, Eagle & Columbia Streets, Albany, New York on the 28th day of January, 2000 at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for a judgment pursuant to CPLR Article 78 ordering the Respondent, John P. Cahill, Commissioner of the New York State Department of Environmental Conservation to pay over to Petitioners the amount of \$2,200,000 from the escrow account of the Respondent Eliot L.

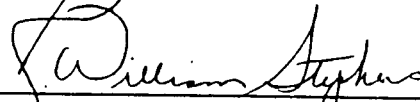
Spitzer, Attorney General of the State of New York as partial reimbursement for closure costs expended by Petitioners at the Frontier Chemical Royal Avenue Hazardous Waste Site; and for other and further relief as requested in the Petition and as may be just, proper and equitable.

PLEASE TAKE FURTHER NOTICE, that an Answer and Supporting Affidavits, if any, shall be served at least five (5) days before the aforesaid date of hearing.

Petitioners designate Albany County as place of trial. The basis of venue is that Respondent, Commissioner John P. Cahill of the NYSDEC, maintains an office in Albany County; the bond which gave rise to the obligation to pay the funds as closure costs was posted in Albany County and the payment of the bond proceeds was called for by respondent's predecessor in Albany County and upon §506(b) of the CPLR.

DATED: December 27, 1999
Buffalo, New York

Yours etc.,
Raichle, Banning, Weiss & Stephens



R. William Stephens, of counsel
Attorneys for Petitioners
Frontier Chemical Royal Avenue Phase I
PRP Group and Frontier Chemical Royal
Avenue Phase II PRP Group
410 Main Street
Buffalo, New York 14202
(716) 852-7587

TO: JOHN P. CAHILL
Commissioner of the New York State
Department of Environmental Conservation
50 Wolf Road
Albany, NY 12233

ELIOT L. SPITZER
Attorney General of the State of New York
The Capitol
Albany, NY 12224

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ALBANY
**FRONTIER CHEMICAL ROYAL AVENUE
PHASE I PRP GROUP and FRONTIER
CHEMICAL ROYAL AVENUE PHASE II
PRP GROUP**

Petitioners

PETITION

-against-

JOHN P. CAHILL, Commissioner of the NYS
Dept. of Environmental Conservation, as Trustee
AND

Index No.:

ELIOT L. SPITZER, Attorney General of the
State of New York, as Custodian of certain funds
on deposit in escrow account.

Respondents

PETITIONERS

The Petition of Frontier Chemical Royal Avenue Phase I PRP Group and Frontier
Chemical Royal Avenue Phase II PRP Group respectfully alleges:

1. Petitioners are groups of companies who have formed PRP Groups to deal with their
putative liability as responsible parties at the Frontier Chemical Royal Avenue Site(932110)
("Site")located in Niagara County, New York and have expended funds for closure at that Site.
Attached hereto as Exhibit "A" and "B" are listings of the original Phase I and Phase II Group
members respectively. Some original members have assigned their rights to reimbursement for
closure costs to remaining group members.

RESPONDENTS

2. Acting upon authority granted to him by virtue of his office respondent John P. Cahill
is the Commissioner of the New York State Department of Environmental Conservation
(NYSDEC) and is Trustee of a fund of over \$2,500,000 held by him and the Department to cover

closure costs at the Frontier Chemical Royal Avenue Hazardous Waste Site.

3. Acting upon authority granted to him by virtue of his office respondent Eliot L. Spitzer is the Attorney General of the State of New York and is the Custodian of funds which are proceeds of a closure bond, which upon information and belief, are on deposit in an escrow account maintained by the Attorney General and have been in such account since about June 5, 1999.

BOND

4. These funds are the proceeds of a bond which was posted as required under New York State Law (NYECL § 27-0917(c)) and Federal Law (42 USC § 6924 (a)(6) and 42 USC § 6924 (t)(1)) by the owner/operator of a facility permitted and authorized to handle hazardous waste to demonstrate financial responsibility for closure costs. The bond was required to provide funds to be held in trust to cover closure costs at that facility located at 4626 Royal Avenue in the City of Niagara Falls, New York. (Title 6 NYCRR § 373-2.8 (j)(2)) A copy of the Bond is attached as Exhibit "C". The exact language of the Bond provides:

WHEREAS, the Principal has agreed to provide financial assurances to the New York State Department of Environmental Conservation (hereinafter referred to as "NYSDEC"), guaranteeing that the sum of \$1,500,000 will be available and made payable to the Commissioner of NYSDEC (hereinafter the "Commissioner") or into a standby trust fund, as directed by the Commissioner, for the benefit of NYSDEC which guaranteed sums *shall provide funding for facility closure* for each and every hazardous waste management facility identified above as provided for and as required for the obtaining and issuing of a permit to own or operate each such facility

Bond Exhibit C, page 2.

5. The Frontier Chemical Royal Avenue Hazardous Waste Site is located in Niagara County. The Bond was posted by the owner/operator Frontier Chemical Corporation in 1991. The bond was to assure to the NYSDEC that the costs of closure would be paid by Frontier Chemical or on behalf of Frontier Chemical if and when closure became necessary. In January, 1994, closure of the site became necessary when Frontier Chemical was unable to pay its utility bills and there was a danger that the tanks and drums on the site would burst because the materials would freeze. Attached hereto as Exhibit "D" is the demand made upon the bonding company by respondent's predecessor to pay the amount of the bond.

6. The closure costs are the costs associated with a closure plan filed by the owner/operator Frontier Chemical as required under 6 NYCRR § 373-3.7(c) which identified the various containers and tanks constituting hazardous waste management units at the Frontier Chemical Royal Avenue Site and how closure of these would be accomplished in accordance with closure performance standards of 6 NYCRR § 373-3.7(c).

7. "Closure" is a term of art in environmental law and refers to the removal from the site of tanks and drums and containers of hazardous waste. It does not include remedial investigation and remedial costs. Attached hereto and marked Exhibit "E" is an affidavit of Frank Shattuck, an engineer and employee of the New York State Department of Environmental Conservation attaching thereto the closure plan which was filed and approved by the New York State Department of Environmental Conservation as required by State Regulations. The plan details the tanks, vats, drums, etc. that were to be removed for closure of the site.

8. The Bonding Company refused to pay the bond posted by the owner/operator on

demand. As a result and because there was an emergency situation developing, the NYSDEC referred the site to the Environmental Protection Agency (EPA) for closure. The petitioners performed the closure of the site at their expense at the direction of EPA and under EPA oversight during the period 1993 to 1996.

9. The petitioners expended in excess of 6 million dollars for closure as set forth in the attached affidavits of Carol D. Quinn (Exhibit F); David L. Cook (Exhibit G); Fredric Jakes (Exhibit H); and Carl J. Johnson (Exhibit I). These affidavits and the exhibits attached to the affidavits have previously been furnished to respondent, John P. Cahill. These affidavits were filed in the action by the State to recover the bond proceeds from the bonding company Acstar Insurance and the statements made therein remain true.

10. As a result of legal action brought by the State of New York in which the petitioners joined, the Bonding Company was required to pay to respondent, Commissioner as Trustee the face amount of the Bond plus the interest. The amount turned over to the Commissioner as a result of this action exceeded \$2.4 million and with accrued interest to date exceeds \$2,600,000.

11. These trust funds are to cover closure costs only. See Bond, Exhibit C, page 2.

12. The only "hazardous waste management facility" referred to in the Bond is the Frontier Chemical Royal Avenue facility. See Bond, Exhibit C, page 2.

13. The closure costs incurred by the State of New York are less than \$2,000 as demonstrated in Exhibit "J" which, upon information and belief, is an itemization of the closure costs of the State of New York through 1998 which total \$1,134.

14. The Environmental Protection Agency claims oversight costs of approximately \$270,000 and no more. On information and belief, the EPA has made no demand against the

trust fund to date for this amount. Furthermore, the petitioners and the EPA have not agreed on the exact amount of oversight costs. In any event, no amount in excess of \$300,000 need be held back to cover this potential claim.

15. There are no other claims for closure costs at the Frontier Chemical Royal Avenue Site. Respondents in answer to this petition should set forth in detail all claims for closure costs at the Frontier Chemical Royal Avenue Site.

16. The closure of the Site is complete. Attached hereto and marked Exhibit "K" is a copy of an affidavit of Kevin Matheis, the Environmental Protection Agency On-Site Coordinator, certifying that the closure of the Site was complete after the work performed by the petitioners at the Site.

17. Closure costs paid by the petitioners exceed \$3 million at the Site as detailed in the aforesaid affidavits of Carol D. Quinn, David L. Cook, Fredric Jakes and Carl J. Johnson. Exhibits F, G, H, and I.

18. In the usual course of events when a hazardous waste site is closed, the Bond monies are paid to the State of New York and if the costs of closure are anticipated to exceed the amount of the proceeds of the Bond, the Bond proceeds are paid to the performing parties who entered into a Consent Order to perform closure at the site.

19. In this case, because the bonding company refused to pay the Bond, legal action was required by the State of New York to collect the Bond proceeds and the bond funds were not available to defray closure costs at the time of site closure.

20. The funds were paid into an escrow account of the respondent, Attorney General Eliot L. Spitzer and, upon information and belief, are still in the custody and control of

respondent, Attorney General Eliot L. Spitzer.

21. Upon information and belief, the amount presently on deposit in trust to cover closure costs exceeds \$2,600,000.

22. After correspondence in July, 1999 and August, 1999 requesting payment of these funds, a formal demand for payment was made on the respondents by petitioners by certified mail dated December 1, 1999, requesting that respondents keep sufficient funds in trust to cover other claimed closure costs but to pay petitioners \$2,200,000. See attached Exhibit "L". Payment has not been received. This special proceeding seeks to compel payment from the escrow account of that amount as partial reimbursement.

23. State regulations require that the bond proceeds only be used for closure costs.

373-2.8 Financial Requirements (a) Applicability

(1) The requirements of subdivisions (c), (d) and (h) - (j) of this section apply to owners and operators of all hazardous waste facilities, except as provided otherwise in this section or in section 373-2.1(a) of this Subpart.

...

(c) *Cost estimates for closure.* (1) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in section 373-2.7(b) through (f) and applicable closure requirements in sections 373-2.9(i), 373-2.10(e), 373-2.11(f), 373-2.12(h), 373-2.13(h), 373-2.14(g) and 373-2.15(h) of this Subpart.

...

(d) *Financial assurance for closure.* An owner or operator of each facility must establish financial assurance for closure of the facility. He must choose from the options as specified in paragraphs (1) through (5) of this subdivision. An owner or operator may also use a combination of the options specified in paragraphs (1) through (8) to provide the total amount of financial assurance for the closure of the facility.

...

(2) **Financial Guarantee Bond.** (i) An owner or operator may satisfy the requirements of this subdivision by obtaining a financial guarantee bond which conforms to the requirements of this paragraph and submitting the bond to the

commissioner.

...
(ii) The wording of the surety bond must be identical to the wording specified in paragraph (j)(2) of this section.

...
(j) *Wording of the instruments.*

...
(2) A financial guarantee bond, as specified in paragraph (d)(2) or (f)(2) of this section of paragraph (d)(2) or (f)(2) of section 373-3.8 of this Part, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

...
WHEREAS, the Principal has agreed to provide financial assurances to the New York State Department of Environmental Conservation (hereinafter referred to as "NYSDEC"), guaranteeing that the sum of \$ _____ will be available and made payable to the Commissioner of NYSDEC (hereinafter the "Commissioner") or into a standby trust fund, as directed by the Commissioner, for the benefit of the NYSDEC which ***guaranteed sums shall provide funding*** [insert "for facility closure and post closure" or such other language, upon written approval of the Commissioner, which limits or reduces the activities for which the Bond guarantees funds] for each and every hazardous waste management facility identified above as provided for and as required for the obtaining and issuing of a permit to own or operate each such facility; and

NYCRR § 373-2.8 (regulations in effect as of May 10, 1991).

24. The Bond that was filed in this case on which the funds were paid to the Attorney General to be held in trust by the Commissioner provides for funding for facility closure and makes no reference to post-closure activity. Bond Exhibit C, Page 2.

25. The failure of respondent, Trustee, John P. Cahill, Commissioner of the New York State Department of Environmental Conservation, to pay the funds is wrongful, illegal and contrary to the State regulations regarding closure, contrary to the provisions of the bond establishing the fund, and a breach of his duty as Trustee of the funds to properly administer the trust and to apply such funds for facility closure costs. Refusal to distribute \$2,200,000 of such funds for closure costs constitutes a failure to perform a

duty enjoined on him by law (CPLR §7803 subd. 1). Such action is also arbitrary and capricious (CPLR § 7803 subd. 3).

26. The continued holding of the funds by respondent, Attorney General Eliot L. Spitzer in an escrow account in his name is a breach of the trust obligation to provide such funds for facility closure.

WHEREFORE, Petitioners request this Court issue an Order:

1. Determining that the failure of the respondent, John P. Cahill to pay \$2,200,000 to petitioners as partial reimbursement for closure costs is a failure to perform a duty enjoined on him by State law and regulation;

2. Determining that the failure of the respondent, John P. Cahill to pay \$2,200,000 to petitioners as partial reimbursement for closure costs is arbitrary and capricious;

3. Requiring the respondent, John P. Cahill as Trustee of the funds held by him for facility closure costs to pay petitioners the minimum amount of \$2,200,000 from funds now held in the escrow account of the Attorney General of the State of New York as partial reimbursement for closure costs incurred by petitioners;

4. Requiring the respondent, Eliot L. Spitzer, Attorney General of the State of New York to issue a check in the amount of \$2,200,000 to petitioners from the funds held in his escrow account which are a portion of the proceeds of the Bond; and

5. In the alternative, converting this special proceeding into an action at law and issuing a Declaratory Judgment:

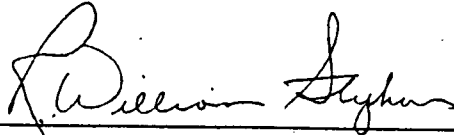
a. Declaring that the continued refusal of the respondents to pay the funds

over is illegal, wrongful and in breach of the Trustee's duties

b. Impressing a trust on the funds held by the respondent, Eliot L. Spitzer
for the benefit of the petitioners

c. Declaring that such funds must be used to pay for closure costs at the
Frontier Chemical Royal Avenue Site and used only to pay closure costs.

DATED: December 27, 1999
Buffalo, New York

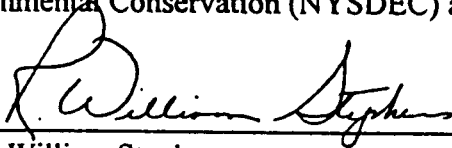


R. William Stephens
Petitioner

VERIFICATION

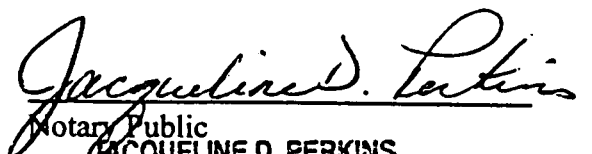
STATE OF NEW YORK)
COUNTY OF ERIE) ss.

R. William Stephens, being duly sworn, deposes and says; that he is an attorney at law duly licensed to practice in the State of New York; that he is a member of the firm Raichle, Banning, Weiss & Stephens, attorneys for Petitioners herein; that he has read the foregoing PETITION herein and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, he believes them to be true. The reason why this verification is not made by the petitioners and is made by deponent is that petitioners are not residents of the county in which deponent has an office. The sources of deponent's information and the ground for his belief as to all matters in the foregoing PETITION not therein stated upon his own knowledge are correspondence with petitioners, review of the bond at issue, review of affidavits and documents in a related action and correspondence with the New York State Department of Environmental Conservation (NYSDEC) and the State Attorney General.



R. William Stephens

Sworn to before me this 27th
day of December, 1999.



Notary Public
JACQUELINE D. PERKINS
Notary Public, State of New York
Qualified in Cattaraugus County
~~My Comm. Expires 11/1/00~~
Jan 14, 2000

Exhibit A

Frontier Chemical Royal Avenue Site
Phase I Group Members
Electing to Participate in Action on Closure Bond

A.B. Chance Company
ABB Kent-Taylor, Inc.
ABB Traction, Inc.
Allentown Cement Company, Inc.
Apollo Metals Ltd.
Aviation Product Support Inc. (APS Inc.)
Armstrong World Industries, Inc.
Athenia Wire (by Seneca Wire & Manufacturing Company)
Buckeye Pipeline Company
Buckner Oil Service, Inc.
Orion Bus Industries
C.R. Bard, Inc.
Champion Products
Chemical Process & Supply
Chromium Corporation
Consolidated Rail Corporation
Creter Vault Corporation
Dana Corporation
Delta Rubber Co.
Eichelbergers, Inc.
Elco U.S.A.
Gardenway Manufacturing - Gardenway Incorporated
Gem Chem, Inc.
Gichner Mobile Systems
Gold Medal Ladder Company
Haskell of Pittsburgh, Inc.
Hedstrom Corporation
Hub Folding Box Co., Inc.
INX International Ink Company
INX International/Midland
Julian B. Slevin Co. Inc.
Ladesco, Inc.
Maine Yankee Atomic Power
Mattatuck Manufacturing
McCann Manufacturing Company
The Mentholatum Company Inc.
Mercy Hospital
Metroland Printing Publishing and Distributing Ltd.
Micros Division of Pierce Co., Inc.
Monarch Cortland - Monarch Machine Tool Company
Odell-Williams Inc.
Olean Advanced Products

ATTACHMENT B

Simon Ladder Towers Inc.
Sonoco Fibre Drum
Specialized Plating, Inc.
Sugarbush Golf Course
Sun Company Inc.
Surfinco Inc.
Techneglas, Inc. (formerly Owens Illinois-NEG TV Products, Inc.)
The Henry Hinckley Co.
Three Dimensional Chemical Corp.
TransTechnology Electronics
Trico Products Corporation
Truck-Lite Co., Inc.
Tursack Printing Inc.
United Panel, Inc.
Verne Corporation
Vibroplating, Inc.
Village of Westfield, New York
Webasto Sunroofs, Inc.
Wilson Greatbatch Ltd
York International Corp. (for Frick Division)
York Modern Corp. (for York Rakes)

Exhibit B

FRONTIER CHEMICAL ROYAL AVENUE PHASE II PRP GROUP

APPALACHIAN ELECTRONIC INSTRUMENT

ATHENIA WIRE/SENECA WIRE & MANUFACTURING CO.

ATOCHEM NORTH AMERICA

AUBURN TECHNOLOGY

BLUE GRASS CHEMICAL SPECIALTIES

BOVANO INDUSTRIES

BUCKHAM TRANSPORT, LTD. OF ONTARIO

BUFFALO COLOR CORP.

BUS INDUSTRIES OF AMERICA

CARRIER CORP./UNITED TECHNOLOGIES

CASE HOYT CORP./BCE/CH HOLD CORP

COMPONENT TECHNOLOGIES, INC.

CORNING, INC.

CYPRUS FOOTE MINERAL

CYTEC/AMERICAN CYANAMID COMPANY

ENVIRO-TANK CLEAN, INC.

ENVIRONMENTAL WASTE RESOURCES

"C"

FISHER INDUSTRIAL SERVICE, INC

INDUSTRIAL FUELS & RESOURCES, INC.

KEYSTONE CARBON CORP.

LAPP INSULATOR COMPANY

MARC EQUITY REALTY

MATHESON GAS

MORRILL PRESS, INC./ENGRAPH, INC.

MURRAY RECON, INC.

NEW YORK TELEPHONE

NIAGARA MOHAWK POWER CORP.

PHELPS DODGE SPECIALTY COPPER PRODUCTS

POLLUTION SOLUTIONS OF VERMONT, INC.

REVERE COPPER PRODUCTS, INC..

SCHWEIZER AIRCRAFT CORP.

SOLVENTS & PETROLEUM

SOUTHLAND CORPORATION

TOWN OF CAMILLUS

: IL/VI Inc.

SANDERS LEGAL PUBLISHERS, INC.
71 W. MOHAWK STREET • BUFFALO, NEW YORK 14202-2473
TEL: (716) 842-6666 FAX: (716) 842-6576
PRINTERS AND STATIONERS TO THE LEGAL PROFESSION

Exhibit C

9.7.23

Acstar Guarantee Bond #2497.

GUARANTEE BOND

Bond Number: 2497

Date bond executed: May 10, 1991

Effective date: May 10, 1991

Principal Frontier Chemical Waste Process, Inc.
4626 Royal Ave.
Niagara Falls, NY 14303

Type of organization: Corporation

State of Incorporation: New York

Surety(ies) ACSTAR Insurance Company
233 Main Street
New Britain, CT 06050

Obligee: New York State Department of
Environmental Conservation

EPA identification numbers, name, address, and penal sum amount(s) for each facility guaranteed by this bond (indicate facility and amounts separately:

<u>EPA ID. #</u>	<u>Address</u>	<u>Penal Sum</u>
NYDO43815703	4626, <u>4626 Royal Ave</u> Niagara Falls, NY 14303	\$1,500,000

Total penal sum of bond: \$1,500,000 (payable in good and lawful money of the United States of America)

WHEREAS, the Principal has agreed to provide financial assurances to the New York State Department of Environmental Conservation (hereinafter referred to as "NYSDEC"), guaranteeing that the sum of \$1,500,000 will be available and made payable to the Commissioner of NYSDEC (hereinafter the "Commissioner") or into a standby trust fund, as directed by the Commissioner, for the benefit of NYSDEC which guaranteed sums shall provide funding for facility closure for each and every hazardous waste management facility identified above as provided for and as required for the obtaining and issuing of a permit to own or operate each such facility; and

WHEREAS, NYSDEC has required this bond guaranteeing prompt payment of monies due to the Commissioner of NYSDEC, as set forth under the terms and conditions of the above-referred to permit, and in accordance with the New York State Environmental Conservation Law, article 27 (hereinafter referred to as "ECL art. 27") and 6 NYCRR Part 370 et seq.; and

WHEREAS, the Surety(ies)/Guarantor(s) herein has realized, analyzed, and weighed the risks attendant to such endeavor and guaranty and has taken such risks into account in determining the consideration for the assumption of this guaranty; and

WHEREAS, said Principal is required, under ECL art. 27, to have a permit in order to own or operate each hazardous waste management facility identified above; and

WHEREAS, said Principal is required to provide financial assurance for closure and post-closure as referred to above, as a condition of the permit(s);

NOW, THEREFORE, know All Persons By These Presents, that we, the Principal and Surety(ies) hereto are held and firmly bound to NYSDEC in the above full and just penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Acstar Guarantee Bond #2497.

373-2.8(j)(2)

PROVIDED, HOWEVER, that the condition of this financial guarantee bond is such that if the Principal shall promptly pay all monies due to NYSDEC to the Commissioner, or into a standby trust fund, as directed by the Commissioner for complete and final closure and post-closure for all of the facilities identified above, such sum being identified above for each such facility, pursuant to the permit(s) and 6 NYCRR Part 370 et seq.

OR, if the Principal shall provide alternate financial assurance, as specified in ECL section 27-0917, as applicable, and obtain the Commissioner's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Commissioner from the Surety(ies), as set forth below, then this obligation shall be null and void, otherwise it is to remain in full force and effect.

HOWEVER, to the extent that monies are paid by the Surety(ies)/Guarantor(s) under the obligations of this bond to NYSDEC or into a standby trust fund, as directed by the Commissioner, then the total penal sum of the bond shall be reduced by the amount so paid and the penal sum allocated to the facility for which the payment was made shall be reduced by the amount of the payment.

FURTHERMORE, the Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions set forth above, in 6 NYCRR Part 370 et seq., and in the permit issued to the Principal. / Upon notification by the Commissioner that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall pay funds to NYSDEC, or into a standby trust, as directed by the Commissioner in the amount guaranteed for the facility(ies) as set forth above as directed by the Commissioner. ✓

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event, shall the obligation for the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail, return receipt requested, to the Principal and the Commissioner, provided, however that the cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Commissioner, as evidenced by the return receipts.

Acstar Guarantee Bond #2497.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Commissioner.

IN WITNESS WHEREOF, the Principal has hereunto set its hand and seal and the Surety(ies) has caused this Instrument to be signed by its Attorney-in-fact

and its corporate seal to be hereunto affixed on this 10th day of May, 1991.

(If Corporation, add seal and attestation)

Attest:

Robert H. Frazer
Secretary Robert H. Frazer
(Add Corporate Seal)

Corporate Surety

FRONTIER CHIMNEY WARE INC.
Principal

By: Ragnall L. Martin

ACSTAR Insurance Company

Surety

By: William J. Dykas
William J. Dykas, Attorney-in-fact

ACSTAR Insurance Company
233 Main St.
P.O. Box 2350
New Britain, CT 06050-2350

State of incorporation: Illinois

Liability limit: (For each facility, and in the aggregate)

\$1,500,000

(Corporate Seal)

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)

Bond premium: \$100,000

Acstar Guarantee Bond #2497.

(ACKNOWLEDGEMENT BY SURETY COMPANY; PREPARE SEPARATE
ACKNOWLEDGEMENT FOR EACH SURETY)

STATE OF Connecticut :
 : SS.: New Britain
COUNTY OF Hartford :

On this day of May 10th, 1991, before me personally came William J. Dykas to me known, who, being by me duly sworn, did depose and say that he resides in New Britain, CT that he is Attorney-in-fact of ACSTAR Insurance Company, the corporation described in and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation and that he signed his name thereto by like order; and that the liabilities of said company do not exceed its assets as ascertained in the manner provided by the laws of the State of New York.

DARRAL AQUINO
NOTARY PUBLIC NO. 53387
MY COMMISSION EXPIRES OCT. 31, 1995


Notary Public

(ACKNOWLEDGEMENT BY PRINCIPAL, IF A CORPORATION)

STATE OF NEW YORK:
 : SS.:
COUNTY OF 4-6407 :

On this 10th day of May, 1991, before me personally came PLATON L. MARTIN, to me known, who being by me duly sworn, did depose and say that (s)he resides in REGENTS PARK, NEW YORK that (s)he is President of FRUITFUL CHURCH OF THE GOSPEL, the corporation described in and which executed the within instrument; that (s)he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that (s)he signed his/her name thereto by like order.


Notary Public

Acstar Guarantee Bond #2497.



233 MAIN STREET • P.O. BOX 2250
NEW BRITAIN, CT 06050-2250
(203) 224-2000

POWER OF ATTORNEY

Know all men by these presents: That ACSTAR Insurance Company, a corporation of the State of Illinois, having its principal office in the City of New Britain, Connecticut, pursuant to the following Resolution, which was adopted by the Board of Directors of the said Company on July 7, 1988, to wit:

RESOLVED, That the following Rules shall govern the execution for the Company of bonds, undertakings, recognizances, contracts and other writings in the nature thereof:

- (1) That the Chairman, the President, the Vice President and General Counsel, or any Attorney-in-Fact, may execute for and on behalf of the Company any and all bonds, undertakings, recognizances, contracts and other writings in the nature thereof, the same to be attested when necessary by the Corporate Secretary, or any Assistant Corporate Secretary, and the seal of the Company affixed thereto; and that the Chairman or President may appoint and authorize any other Officer (elected or appointed) of the Company, and Attorneys-in-Fact to so execute or attest to the execution of all such writings on behalf of the Company and to affix the seal of the Company thereto.
- (2) Any such writing executed in accordance with these Rules shall be as binding upon the Company in any case as though signed by the President and attested to be the Corporate Secretary.
- (3) The signature of the Chairman or the President of the Company may be affixed by facsimile on any power of attorney granted pursuant to this Resolution, and the signature of a certifying officer and the seal of the Company may be affixed by a facsimile to any certificate of any such power, and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company.
- (4) Such other Officers of the Company, and Attorneys-in-Fact shall have authority to certify or verify copies of this Resolution, the By-Laws of the Company, and any affidavit or record of the Company necessary to the discharge of their duties.

does hereby nominate, constitute and appoint

Henry W. Nozko, Sr., Henry W. Nozko, Jr., Robert H. Frazer,
David A. Price, William J. Dykes, Bryan H. Marsh

each individually if there be more than one

named, its true and lawful Attorney-in-Fact, to make, execute, seal and deliver on its behalf, and as its act and deed any and all bonds, undertakings, recognizances, contracts and other writings in the nature thereof in penalties not exceeding FIVE MILLION DOLLARS (\$5,000,000.00) each, and the execution of such writings in pursuance of these presents, such be as binding upon said Company, as fully and amply, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office.

IN WITNESS WHEREOF, Henry W. Nozko, Sr., Chairman and Henry W. Nozko, Jr., President, have hereunto subscribed their names and affixed the corporate seal of the ACSTAR INSURANCE COMPANY this 1st day of April 1990.

ACSTAR Insurance Company

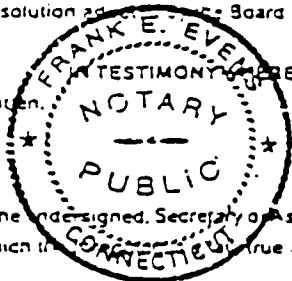
by Henry W. Nozko, Sr.
Henry W. Nozko, Sr., Chairman

by Henry W. Nozko, Jr.
Henry W. Nozko, Jr., President

STATE OF CONNECTICUT)
) ss. NEW BRITAIN
COUNTY OF HARTFORD)

On this 1st day of April A.D. 1990, before me, a Notary Public of the State of Connecticut came, Henry W. Nozko, Sr., Chairman and Henry W. Nozko, Jr., President of the ACSTAR Insurance Company, to me personally known to be the individuals and officers who executed the preceding instrument, and they acknowledged that they executed the same, and the seal affixed to the preceding instrument is the corporate seal of said Company; that the said corporate seal and their signatures were duly affixed by the authority and direction of the said corporation, and the Resolution of the Board of Directors of said Company, referred to in the preceding instrument, is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at the City of New Britain the day and year first above written.



Frank E. Evens
Notary Public - Frank E. Evens

I, the undersigned, Secretary or Assistant Secretary of ACSTAR Insurance Company, do hereby certify that the original POWER OF ATTORNEY of which this is a true and correct copy, is in full force and effect.

In witness whereof, I have hereunto subscribed my name as Secretary, or Assistant Secretary and affixed the corporate seal of the Corporation, this 1st day of April, 19 91.

Robert H. Frazer
Secretary OR

Margaret S. McKibbin
Asst. Secretary

Not valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees.

Letter From Acstar—First Notice of Bond
Cancellation (May 1, 1992).

Form 10-1

Fax Transmittal Memo 7572

Margaret O'Neil
NYSDC - Albany
HSR - 7253
(518) 457-0629

1
8-3-92 2:00pm
Lorine Violanti
NYSDC
Buffalo
(716) 851-7236
(716) 851-7222

JAN-11-'92 WED 03:10 10:

TEL NO:

NO32 P21

JAN-11-'92 WED 03:11 10:

TEL NO:

NO32 P02



"RETURN RECEIPT REQUESTED"
P-851-616-327

111 MAIN STREET • P.O. BOX 1040 • NIAGARA FALLS, NY 14303-1040 • (518) 776-2000

May 1, 1992

New York State Department
of Environmental Conservation
50 Wolf Road
Albany, NY 12233

RE: NOTICE OF CANCELLATION - BOND NO. 2497, GUARANTEE BOND
INSURED: FRONTIER CHEMICAL WASTE PROCESS, INC.
4626 ROYAL AVE.
NIAGARA FALLS, NY 14303

This letter is to formally notify you of the cancellation of the
above referenced bond effective September 3, 1991.

Please confirm in writing your acceptance of this cancellation.

Sincerely,

William J. Dykes, CPCU
Chief Financial Officer

WJD/dms

CC: Mr. Jerry Horton
Frontier Chemical Waste Process, Inc.

• Steffany (Treasure)
and she said it
was good until
September

System in place

• Supposedly go to
Councils (Max Gustin)
• Has to be more
specific as to who
gets it forwarded to

Letter From Acstar—First Recission of
Bond Cancellation (August 17, 1992).



133 MAIN STREET • P.O. BOX 1130 • NEW BRITAIN, CT 06050-1130 • (203) 234-3000

August 17, 1992

Mr. Jeff Lacey
New York State Department
of Environmental Conservation
50 Wolf Road
Albany, New York 12233

RE: RESCISSION OF CANCELLATION - BOND NO. 2497 GUARANTEE BOND
INSURED: FRONTIER CHEMICAL WASTE PROCESS, INC.
4626 ROYAL AVE.
NIAGRA FALLS, NY 14303

This letter is to formally notify you of our rescission of the
cancellation of the above referenced bond mailed to you on May
1, 1992. This bond will remain in full force and effect.

Sincerely,

A handwritten signature in dark ink, appearing to read "H. Nozko, Jr.", written over the typed name.

Henry W. Nozko, Jr.
President

WJD/bd

cc: Mr. Garry Norton
President
Frontier Chemical Waste Process, Inc.

Mr. Joe Cardinale
World Wide Bonding

Letter From Acstar—Second Notice of
Bond Cancellation (October 2, 1992).

"RETURN RECEIPT REQUESTED"
P-376-780-479



233 MAIN STREET • P.O. BOX 2350 • NEW BRITAIN, CT 06050-2350 • (203) 224-2000

October 2, 1992

New York State Department
of Environmental Conservation
50 Wolf Road
Albany, NY 12233

RE: NOTICE OF CANCELLATION
BOND NO. 2497 - FRONTIER CHEMICAL WASTE PROCESS, INC.

This letter is to formally notify you of the cancellation of the
above referenced bond effective February 5, 1993.

Please confirm in writing your acceptance of this cancellation.

Sincerely,

A handwritten signature in dark ink, appearing to read "William J. Dykas", is written over a horizontal line.

William J. Dykas, CPCU
Chief Financial Officer

WJD/dms

cc: Mr. Jerry Norton
Mr. Joe Cardinale

Letter From Commissioner of DEC—Demand for
Penal Sum of Bond (January 15, 1993).

STATE OF NEW YORK

DEPARTMENT OF

ENVIRONMENTAL CONSERVATION

ALBANY, NEW YORK 12233-1010



THOMAS C. JORLING
Commissioner

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

January 15, 1993

Dear Mr. Dykas:

Frontier Chemical Waste Process, Inc. formerly operated a hazardous waste treatment, storage and disposal facility ("TSDF") at 4626-Royal Avenue, Niagara Falls, New York. Regulations promulgated under authority of the New York State Environmental Conservation Law require owners and operators of TSDFs to establish financial assurances for closure of the facility (6 NYCRR §373-3.8(d)). In order to fulfill this obligation, Frontier Chemical Waste Process, Inc., as principal, obtained a bond with ACSTAR Insurance Company, as surety, in the amount of \$1,500,000. The bond is payable to the New York State Department of Environmental Conservation ("DEC"). The bond was issued on May 10, 1991. A copy of the bond is enclosed.

Frontier Chemical Waste Process, Inc. ceased operations at the Royal Avenue facility on December 22, 1992 at 12 o'clock noon. The facility is now under the control of the United States Environmental Protection Agency ("EPA") which is in the process of removing waste and closing the facility. EPA took this action, under authority of the federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), upon request of the DEC. This action was taken when Frontier Chemical Waste Process, Inc. and Eagle Vision Environmental, Inc. failed to comply with a Summary Abatement Order issued by the Commissioner under authority of ECL §71-0301. The Summary Abatement Order was issued on December 4, 1992 and modified on December 12, 1992. The Order required Frontier Chemical Waste Process, Inc. and Eagle Vision Environmental, Inc. to either establish escrow accounts that would insure continued provision of utility services and minimal staffing at the facility by 12 o'clock noon on December 22, 1992 or to submit a schedule for removal of all waste from the facility by 12 o'clock noon on December 22, 1992, with actual removal to commence no later than December 28, 1992. The Order further stated that, in the event of Respondents' noncompliance, DEC was directed to initiate an appropriate emergency removal action and seek to recover any costs and expenses incurred by DEC or EPA. A copy of the Order and Modification is enclosed.

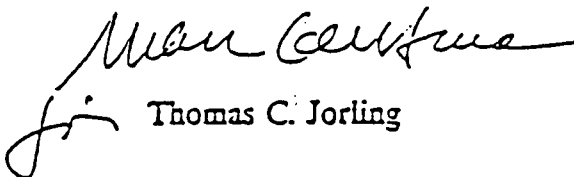
The Department has made demand upon Frontier Chemical Waste Process Inc. for payment of the closure costs. Frontier Chemical Waste Process Inc. has declined to pay the sum of \$1,500,000 (or any lesser sum) to the Department for closure costs. Indeed, it is the company's financial instability that led to issuance of the Summary Abatement Order and non-compliance with such Order.

**Letter From Commissioner of DEC—Demand for
Penal Sum of Bond (January 15, 1993).**

2.

Accordingly, demand is hereby made that ACSTAR Insurance Company, as surety, pay \$1,500,000 (in cash or certified funds) to the New York State Department of Environmental Conservation by January 29, 1993. Such payment shall be made at the DEC offices located at 50 Wolf Road, Room 609, Albany, New York 12233 and shall be directed to the attention of Deborah W. Christian in the Division of Environmental Enforcement.

Sincerely,


Thomas C. Jorling

Enclosures

Mr. William J. Dykas
ACSTAR Insurance Company
233 Main Street
New Britain, CT 06050

SANDERS LEGAL PUBLISHERS, INC.
71 W. MOHAWK STREET • BUFFALO, NEW YORK 14202-2473
TEL: (716) 842-6666 FAX: (716) 842-6576
PRINTERS AND STATIONERS TO THE LEGAL PROFESSION

Exhibit D

Exhibit "H" Annexed to Affidavit of Gormley.

THOMAS C. JORLING
COMMISSIONERSTATE OF NEW YORK
DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
ALBANY, NEW YORK 12233-1010CERTIFIED MAIL
RETURN RECEIPT REQUESTED

January 15, 1993

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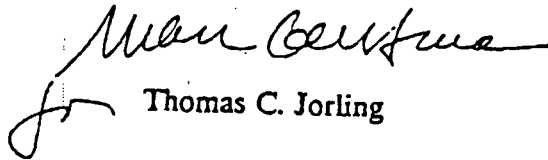
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Exhibit "H" Annexed to Affidavit of Gormley.

2.

Accordingly, demand is hereby made that ACSTAR Insurance Company, as surety, pay \$1,500,000 (in cash or certified funds) to the New York State Department of Environmental Conservation by January 29, 1993. Such payment shall be made at the DEC offices located at 50 Wolf Road, Room 609, Albany, New York 12233 and shall be directed to the attention of Deborah W. Christian in the Division of Environmental Enforcement.

Sincerely,



Thomas C. Jorling

Enclosures

Mr. William J. Dykas
ACSTAR Insurance Company
233 Main Street
New Britain, CT 06050

Exhibit E

**Affidavit of Frank E. Shattuck, P.E.,
Sworn to December 5, 1996.**

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

STATE OF NEW YORK, THOMAS C. JORLING,
as Commissioner of the New York State
Department of Environmental Conservation,
FRONTIER CHEMICAL ROYAL AVENUE PHASE I
PRP GROUP and FRONTIER CHEMICAL
ROYAL AVENUE PHASE II PRP GROUP,

**AFFIDAVIT OF
FRANK E. SHATTUCK, P.E.**

Plaintiffs,

Index No. 13732-93

-vs-

ACSTAR INSURANCE COMPANY as Guarantor
for Frontier Chemical Waste Process, Inc.
and Eagle Vision Environmental
Corporation, Inc.,

Defendant.

STATE OF NEW YORK)
COUNTY OF ERIE) SS.:
CITY OF BUFFALO)

FRANK SHATTUCK, being duly sworn, deposes and says:

1. I am an Environmental Engineer IV with the New York State Department of Environmental Conservation ("NYSDEC"), Division of Solid and Hazardous Materials. I work in the Department's Region 9 headquarters in Buffalo. Region 9 includes Allegany, Cattaraugus, Chautauqua, Erie, Niagara and Wyoming counties. I am a licensed professional engineer, registered in the State of New York and have been employed by the NYSDEC since July 1, 1970.
2. I make this affidavit in support of a cross-motion for summary judgment made by the State of New York and joined in by parties who have done

**Affidavit of Frank E. Shattuck, P.E.,
Sworn to December 5, 1996.**

cleanup work at the Frontier Chemical Royal Avenue site.

3. Attached hereto and marked as Exhibit "1" is a copy of a written closure plan for the Frontier Chemical Royal Avenue ("Frontier") site. The closure plan was submitted to the NYSDEC as part of Frontier's June 1990 application for a permit to operate a hazardous waste management facility pursuant to 6 NYCRR §§ 373-1.5(a)(2)(xiii) and 373-2.7. Such a written closure plan was required under 6 NYCRR §373-3.7(c) for owners and operators of hazardous waste management facilities like Frontier who were operating under the Interim Status Standards Regulations for Owners and Operators of Hazardous Waste Facilities, 6 NYCRR Subpart 373-3.

4. As required under 6 NYCRR § 373-3.7(c)(2), the attached closure plan identifies the various containers and tanks constituting hazardous waste management units at Frontier and how closure of them will be accomplished in accordance with closure performance standard of 6 NYCRR § 373-3.7(b).

5. All of the approximately twenty NYSDEC Commissioner's Orders on Consent issued to Frontier since 1980, and many other documents pertaining to Frontier are documents from the records of the NYSDEC which are made and kept in the regular course of business, and are documents available for public inspection pursuant to the New York Freedom of Information Law, Public Officers Law § 84 et seq., 6 NYCRR Part 616. Said documents were so accessible before, throughout and since the entire time period the Acstar Insurance Company initially posted, then purported to cancel, then rescinded the cancellation of the bond at issue, as

1071

**Affidavit of Frank E. Shattuck, P.E.,
Sworn to December 5, 1996.**

described in my affidavit dated September 13, 1996.

Frank E. Shattuck
FRANK E. SHATTUCK, P.E.

Sworn to before me this
5 day of December, 1996

Paul R. Scherf, Jr.
Notary Public

PAUL R. SCHERF, JR.
Notary Public, State of New York
No. 4950948
Qualified in Erie County
Commission Expires May 8, 1997

Exhibit "1" Annexed to Affidavit of Shattuck.

13.0 CLOSURE PLAN

[6 NYCRR 373-1.5(a)(2)(xiii) and 373-2.7(a)-(f)]

In addition to the Closure Standards in 373-2.7(a) through (f), this closure plan employs the following applicable standards for the types of hazardous waste management units used at the facility:

373-2.9: Containers

373-2.10: Tanks

Frontier Chemical will notify the Commissioner of the Department of Environmental Conservation at least 180-days prior to the date closure is expected to begin in accordance with 6 NYCRR 373-2.7(c)(3).

13.1 General Closure Sequence

The various hazardous waste storage and treatment systems which are operated at the facility are mutually dependent upon one another. With consideration given to this interdependence, a specific sequence for closure of individual hazardous waste management unit operations was developed. This sequence involves performing the following tasks in the order listed:

- processing containers of "on-site" PCC Codes in an appropriate treatment system,
- preparation and shipment of containers of "off-site" PCC Codes to an appropriate facility,
- closure of the oxidation treatment system,
- closure of the fuels blending system,
- closure of the wastewater treatment system (exclusive of carbon adsorption and discharge tanks),
- closure of the container storage containment areas,
- closure of the tank containment areas, and finally,
- closure of the carbon adsorption unit.

Exhibit "1" Annexed to Affidavit of Shattuck.

Containers (primarily drums) of the various waste types which can be processed will be introduced into the designated system for processing. Those containers will then be rinsed, crushed and sent off-site for reclamation of their scrap metal value.

The rinsings generated in handling the containers, once waste has been removed, will be considered hazardous waste and will be managed as such. The rinsings generated from decontamination of the containers will be included in the same system into which the wastes were transferred for treatment. The containers are exempt from regulation because they qualify as "empty" [as per 371.1 (f)(2)] and also because they are being recycled as "scrap metal" [as per 372.1(e)(2)(iv)]. No credit for the scrap metal value of the drums has been included in the closure cost estimate.

While Frontier Chemical fully expects to perform closure of its facility employing Frontier Chemical personnel, this closure plan and its associated closure estimate have been prepared with the assumption that this work will be done by a "third party", that is, an independent, outside contractor as required by 6 NYCRR 373-2(c)(1)(ii).

In the closure of each of the individual treatment processes, the closure cost estimate assumes the system will be operated by an outside, independent third-party contractor who will process bulk inventory (tanks) using the normal process flow.

13.2 Closure Performance Standard [373-2.7(b)]

This closure plan is designed to ensure that the facility will not require further maintenance and controls, minimize and/or eliminate threats to human health and the environment, and avoid the escape of hazardous waste, hazardous waste constituents, contaminated rainfall, or waste decomposition products to the ground, surface waters or to the atmosphere. If there is evidence of spills or leaks in portions of the facility where concrete containment areas are not provided, samples will be taken and

Exhibit "1" Annexed to Affidavit of Shattuck.

analyzed to determine the extent of contamination in the soil and, if necessary, in the groundwater. If spills or leaks occur within any of the concrete containment areas, spilled materials will be recovered and re-introduced into the appropriate system. All concrete containment surfaces will be decontaminated with a high pressure hot water spray to remove any surface contamination. A detergent may be added to the water, if needed, to enhance the cleaning.

13.3 Partial vs. Final Closure [373-2.7(c)(1)(i)]

It is envisioned that closure plan implementation would take place at some point in time near the end of the useful operating life of the various systems in use at the facility. The useful operating life for the individual treatment processes at the facility can be estimated to be approximately 10-20 years. During the projected operating life for each of the systems, the need may arise for partial closure activities associated with decommissioning of a particular system(s). The partial closure of a particular system could potentially result from:

- changing processing cost factors and/or market conditions which render that system no longer economically feasible,
- improved technology which can more efficiently treat the waste types processed in a particular on-site system,
- changes in regulations which are not technologically achievable for that system.

If the need should arise for partial closure of the facility, i.e., removal of a particular system or systems, the closure of the operation would follow the steps detailed for the system in the final closure plan scenario presented.

In the event that the wastewater treatment system should undergo partial closure prior to final closure of the facility, the

Exhibit "1" Annexed to Affidavit of Shattuck.

unit operations removed from service would be replaced by improved, more efficient technology capable of handling aqueous by-products and rinsewaters generated from subsequent operation and closure of other processes. Alternatively, the necessary treatment capability could be provided temporarily with portable (mobile) treatment units (i.e carbon adsorption, metals removal, etc.) until such time as final closure is completed.

13.4 Maximum Waste Inventory [373-2.7(c)(1)(ii)]

The maximum waste inventory is established by the volumes of waste that are allowed under permit conditions for the facility. The maximum inventory would consist of waste in containers (primarily 55-gallon drums) and waste in bulk tanks.

13.4.1 Containers

The maximum number of containers (primarily 55-gallon drums) at the facility would be 4772 drums, utilizing containment capacity of the various container storage areas and compatibility considerations as presented in this application.

Table 13.1 is a listing of the maximum number of drums that could be stored in each of the drum storage areas.

Exhibit "1" Annexed to Affidavit of Shattuck.

Container Storage Area Capacities

<u>Storage Area</u>	<u>Number of Drums</u>
DS-2	744
DS-3	192
DS-4	200
DS-5	352
DS-6	172
DS-7	480
DS-8	40
DS-9	184
DS-10	112
DS-11	120
DS-12	40
DS-13	40
DS-14	140
DS-15	64
DS-16	880
DS-17	132
DS-18	240
C-500	<u>640</u>

Maximum Inventory On-site = 4,772

Exhibit "1" Annexed to Affidavit of Shattuck.

13.4.2 Oxidation System

The following tanks and corresponding maximum waste volumes are associated with the oxidation process:

<u>Tank</u>	<u>Use</u>	<u>Volume (gallons)</u>
301	Cyanide/Sulfide	7,500
302	Cyanide/Sulfide	7,500
303	Cyanide/Sulfide	10,000
304	Hypochlorite	11,980
305	Hypochlorite	11,980
306	Sodium Hydroxide	10,000
307	Cyanate Storage	10,000
R-301	Oxidation Reactor	5,943
R-302	Oxidation Reactor	5,943

13.4.3 Blended Fuels System

The following tanks and corresponding maximum waste volumes are associated with the blended fuels system:

<u>Tank</u>	<u>Use*</u>	<u>Volume (gallons)</u>
201	Low-chlor Blended Fuel	18,240
202	Low-chlor Blended Fuel	18,240
203	Hi-chlor Blended Fuel	18,240
204	High TOC Aqueous Waste Storage	18,240
205	Low-chlor Blended Fuel	31,700
206	Low-chlor Blended Fuel	31,700
207	Low-chlor Blended Fuel	48,900
208	High TOC Aqueous Waste Storage	50,500
209	Non-hazardous Aqueous Waste Storage	20,800
210	Low-chlor Blended Fuel	1,100
215	Sump Water Collection	17,000
102	High TOC Aqueous Waste Storage	51,800

* Refer to Section I for more detailed description.

Exhibit "1" Annexed to Affidavit of Shattuck.

13.4.4 Wastewater Treatment System

The following tanks and corresponding maximum waste volumes are associated with the wastewater treatment system:

<u>Tank</u>	<u>Use</u>	<u>Volume (gallons)</u>
101	Low TOC Aqueous Receipts	51,800
103	Acids	20,600
104	Acids (for off-site disposal)	19,300
105	Concentrated Acids	3,400
106	Bisulfite	5,980
107	Lime Slurry	17,000
108	Lime Slurry	6,000
R-101	Neutralization	13,800
R-102	Neutralization	13,750
109	Filter Feed	17,000
110	Filter Feed	17,000
111	Filter Feed	17,000
112	Low TOC Aqueous	12,300
113	pH Adjustment	5,123
114	HCl	4,900
115	Filtrate	7,590
116	Surge	1,570
F-A	Sand Filter	1,000
F-B	Sand Filter	1,000
V-1	Carbon Adsorber	3,500
V-2	Carbon Adsorber	3,500
T-1	Discharge	105,200
T-2	Discharge	105,750

Exhibit "1" Annexed to Affidavit of Shattuck.**13.5 Inventory Removal/Processing [373-2.7(c)(1)(iii)]**

In performing the closure of any of the systems at the facility, the system would be operated to initially treat and/or ship off-site the maximum volumes of waste which have been indicated in the preceding inventory section. As capacity is created in the tanks at the beginning of the process, drum feedstocks of those PCC Codes which could be processed on-site would then begin to be transferred into those tanks. The system would continue to operate until such time as the entire bulk (tanks) and drum (containers) inventory for that system have been processed.

The drums which previously contained waste will be properly rinsed to ensure that they meet the definition of an "empty" container as defined in 6 NYCRR 371.1(f)(2).

The rinsings generated from handling of the drums from which waste has been removed will be directed to the feed tank, storage tank or appropriate reactor vessel into which the waste from that drum was transferred. All drums which have been rinsed will then be crushed using a drum crusher and transferred to 20 cu.yd. dump trailers for off-site shipment to a metals recycler for reclamation of their scrap metal value.

Once all drum feedstocks have been transferred into the feed tank or storage tank of the treatment system (or into a reactor), the contents of that tank will then be processed or treated in accordance with the process methodology specified for that system. Once a tank has been emptied, it will be decontaminated using high pressure hot water.

Since both carbon steel and FRP tanks have internal surfaces which are relatively "impermeable", the cleansing ability of the high pressure washer will effectively remove residues of hazardous waste or hazardous waste constituents from the interior surface of the tanks. Decontamination will be verified as specified in

Exhibit "1" Annexed to Affidavit of Shattuck.

paragraph 13.5.7, Decontamination. Once decontamination is completed, the tanks will be offered for sale as used process equipment or be cut-up for their scrap metal value. No value for this scrap metal has been included in the closure cost estimate.

After the tanks have been removed from a given containment area, the interior concrete surfaces of the containment area will be decontaminated using high pressure hot water. A detergent may be added to the hot water to enhance cleaning. As is the case with the interior surfaces of the tanks, decontamination of each containment area will be verified as specified in paragraph 13.5.7, Decontamination. The decontaminated concrete surfaces will be left intact pending a decision by the property owner as to whether the parcel will be offered for sale (following closure) as a possible chemical production facility or whether the existing buildings and structures will be demolished. If demolition of the site proceeds, the decontaminated concrete containment areas could be broken up by the demolition contractor and used as a stable base for the final grading of the property.

13.5.1 Oxidation System

The following volumes of waste would be shipped off-site for disposal.

<u>Tank No.</u>	<u>Total Volume (gallons)</u>	<u>Liquid (gallons)</u>	<u>Sludge (gallons)</u>
301	7,500	7,500	---
302	7,500	7,500	---
303	10,000	10,000	---
304	11,980	11,980	---
305	11,980	11,980	---
306	10,000	10,000	---
307	10,000	10,000	---
R-301	5,943	5,943	---
R-302	5,943	5,943	---

Due to the nature of the waste and treatment methods utilized in this system, there are no sludges remaining in these tanks after liquid removal.

Exhibit "1" Annexed to Affidavit of Shattuck.**13.5.2 Blended Fuels System**

The following volumes of waste would be processed through the blended fuels system:

<u>Tank No.</u>	<u>Total Volume (gallons)</u>	<u>Liquid (gallons)</u>	<u>Sludge (gallons)</u>
201	18,240	15,504	2,736
202	18,240	15,504	2,736
203	18,240	15,504	2,736
204	18,240	15,504	2,736
205	31,700	26,945	4,755
206	31,700	26,945	4,755
207	48,900	41,565	7,335
208	50,500	42,925	7,575
209	20,800	17,680	3,120
210	1,100	935	165
215	17,000	14,450	2,550
102	51,800	44,030	7,770

Of the total volume of wastes processed, much of that volume will result in fuel product shipped off-site for use as a secondary, synthetic fuel. Since organic sludges can settle out from the blended fuels, a certain proportion of the waste volume (approximately 15%) has been assumed to be associated with those sludges. During closure activities, the organic sludges will be containerized and shipped off-site for disposal.

Exhibit "1" Annexed to Affidavit of Shattuck.

13.5.3 Wastewater Treatment

The following volumes of waste would be processed through the wastewater treatment system:

<u>Tank No.</u>	<u>Total Volume (gallons)</u>	<u>Liquid (gallons)</u>	<u>Sludge (gallons)</u>
101	51,800	49,210	2,590
103	20,600	19,570	1,030
104	19,300	18,335	965
105	3,400	3,230	170
106	5,980	5,681	299
107	17,000	16,150	850
108	6,000	5,700	300
R-101	13,800	13,110	690
R-102	13,750	13,063	687
109	17,000	16,150	850
110	17,000	16,150	850
111	17,000	16,150	850
112	12,300	11,685	615
113	5,123	4,867	256
114	4,900	4,655	245
115	7,590	7,211	379
116	1,570	1,492	78
F-A	1,000	1,000	1,000
F-B	1,000	1,000	1,000
V-1	3,500	3,500	3,500
V-2	3,500	3,500	3,500
1	105,200	99,940	5,260
2	105,750	100,463	5,287

The total volume of wastes processed in the wastewater treatment system will produce an aqueous effluent suitable for discharge to the City of Niagara Falls Wastewater Treatment Plant and a dewatered sludge suitable for off-site shipment and disposal at a permitted hazardous waste landfill disposal facility.

Exhibit "1" Annexed to Affidavit of Shattuck.

The activated carbon in the wastewater treatment system is leased under a contract with Calgon Corporation and as such, the responsibility for removal of spent carbon rests with its owner, Calgon Corporation.

13.5.4 Container Storage Areas

Once the waste in inventory in each of the container storage areas has been removed and introduced into processing, the surface of each of the container storage containment areas will be decontaminated using high pressure hot water. The rinsewaters generated in decontaminating these areas will be collected in the sumps for that area and transferred to the carbon adsorption unit for processing. The sumps will then be decontaminated in a similar manner. Decontamination of each area shall be verified as specified in paragraph 13.5.7, Decontamination.

13.5.5 Secondary Containment Areas

When the tanks in a containment area have been emptied and decontaminated with high pressure hot water, they will be sold and removed by a demolition contractor for reuse or their scrap metal value. No value for the tanks has been taken in the closure cost estimate. After all the tanks in a given containment area have been removed, the interior surface of the containment area will be decontaminated with high pressure hot water. The rinsewaters generated during decontamination will be collected in the sump(s) for that area and transferred to the carbon adsorption unit for processing. The sumps will then be decontaminated in a similar manner.

13.5.6 Facility Buildings

The existing buildings on the site would be reused or leased by the property owner or be the subject of a demolition contract let by the property owner.

Exhibit "1" Annexed to Affidavit of Shattuck.

13.5.7 Decontamination

Each tank and containment area will be decontaminated using a high pressure hot water rinse. A cleaning agent or detergent may be added to enhance the effectiveness of this operation. In addition, a sample of the rinsings will be taken and analyzed for the parameters listed in Table 13.2. The rinsings will be removed from the area and processed as specified in this Closure Plan.

If the contaminants specified in Table 13.2 are detected, the operation is repeated and the rinsings sampled and analyzed. This procedure will be repeated until the analysis of the rinsings verifies the decontamination of the tank or containment area. All sampling and analyses will be performed using EPA-approved methods.

All pipes, pumps and processing equipment will be rinsed with an appropriate solvent (e.g., diesel fuel for equipment from Fuel Blending, water for equipment from Aqueous Wastewater Treatment and Cyanide/Sulfide Oxidation). The rinsings will be analyzed as previously specified. The parameters to be analyzed are to be determined from Table 13.2, based upon the area in which the equipment was used (e.g., pumps from PH-201 would be analyzed for parameter listed for PH-201). This procedure will be repeated until the analysis of the rinsings verifies the completion of decontamination.

13.5.8 Off-site TSDF Designation

In the removal/processing of the inventory on-site, there will be a number of wastes, by-products and residues which will be generated that will require off-site treatment or disposal.

In operation of the blended fuels system the following by-products or residues will be generated:

- blended fuel requiring burning in a cement kiln
- organic tank bottoms requiring burning/incineration.

Exhibit "1" Annexed to Affidavit of Shattuck.

TABLE 13.2

<u>Area or Equipment</u>	<u>Analytical Parameters</u>
Fuel Blending: C-201, C-202, C-203 C-204, C-205, C-206 Tank Nos. 201-210, 102, 215 PH-201, PH-202, PH-101	Solvent Scan
Oxidation System: C-301 C-302, C-303, C-304 Tank Nos. 301-307, R-301, R-302	Total Cyanide TCLP Toxicity (Metals)
Wastewater Treatment: C-101 through C-109 Filter Press, PH-101, 102 and 103 Tank Nos. 101, 103-116, R-101, R-102, F-A, F-B, V-1, V-2, 1, 2	TCLP Toxicity (Metals) TOC* *Any cleaning agent used during decontamination must be taken into account when analyzing for this parameter.
Container Storage Areas DS-2 through DS-18	*TCLP Toxicity (Metals) *Cyanide *Solvent Scan *PCB wipe test *only as appropriate for each specific storage area.

Exhibit "1" Annexed to Affidavit of Shattuck.

In the operation of the wastewater treatment system, metal hydroxide sludge will be generated which will require disposal in a permitted hazardous waste landfill. Also, the solids removed from the tanks will require disposal in a permitted hazardous waste landfill.

Containers of wastes stored at this facility with the following process (PCC) codes require off-site treatment and/or disposal and will be shipped in their containers:

PC-5 (B)	PC-23
PC-11 (C)	PC-24
PC-13	PC-26
PC-17	PCB Wastes

The off-site TSD facilities which are proposed to be used in conducting closure are designated in the closure cost estimate (Section 15.0).

13.6 Closure Schedule [373-2.7(c)(1)(iv) and 373-2.7(d)]

The anticipated schedule for closure is as follows:

<u>Area (Process)</u>	<u>(Calendar) Days Elapsed</u>
oxidation system	0-10
fuels blending	0-60
wastewater treatment system	60-80
container storage areas	80-100
tank containment areas	100-120
carbon adsorption unit	120-130

The time line diagram which follows as Figure 13.3, depicts the sequence of closure activities, total time required for closure of specific areas and activities which occur concurrently during the period of closure.

Exhibit "1" Annexed to Affidavit of Shattuck.

The expected year of closure is 2002, the expiration date for the current lease on the property.

13.7 Certification of Closure [373-2.7(f)]

During the implementation of the closure plan, an independent, registered professional engineer in New York State will be responsible for:

- monitoring the progress of closure activities for conformance with the proposed closure schedule
- maintaining inspection reports and field logs which detail the results of all sampling and analysis activities conducted during inspections and a list of all facility documents reviewed

When closure is completed, the owner or operator will submit to the Commissioner certification by both the owner and the operator and by an independent professional engineer registered in New York State that the facility has been closed in accordance with the specifications in the approved closure plan.

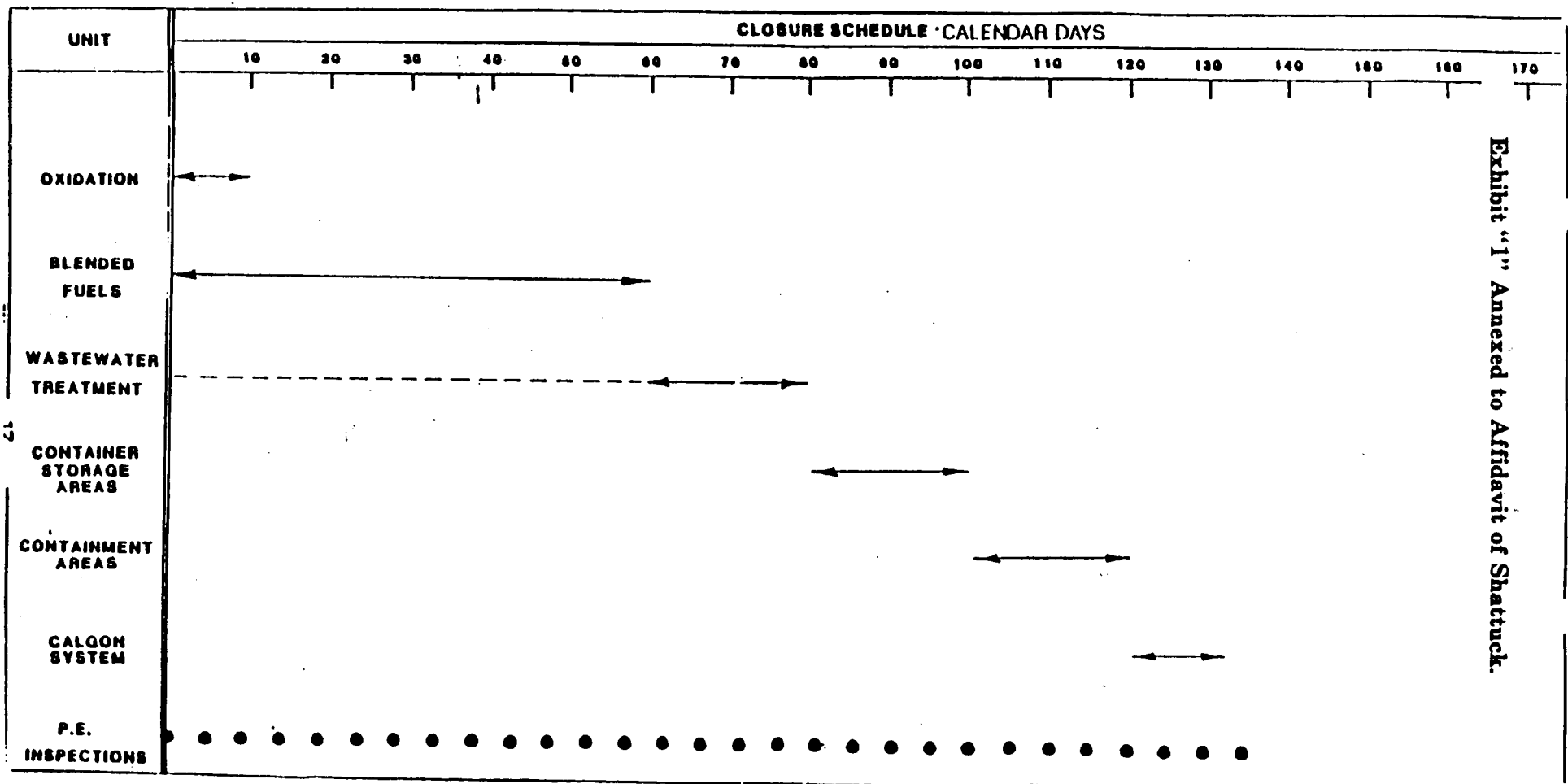


Exhibit F

**STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE**

**STATE OF NEW YORK, THOMAS C. JORLING,
as Commissioner of the New York State
Department of Environmental Conservation,
Frontier Chemical Royal Avenue Phase I PRP
Group and Frontier Chemical Royal Avenue
Phase II PRP Group,**

Index No.: 13732-93

Plaintiffs,

**AFFIDAVIT OF
CAROL D. QUIN**

vs.

**ACSTAR INSURANCE COMPANY as Guarantor
for Frontier Chemical Waste Process,
Inc. and Eagle Vision Environmental
Corporation, Inc.,**

Defendant.

STATE OF VIRGINIA)
 :SS
CITY OF ALEXANDRIA)

Carol D. Quin, being duly sworn, deposes and says that:

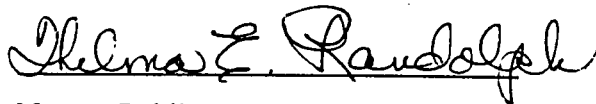
1. I am a Settlement Support Associate for Clean Sites, Inc. ("Clean Sites") and I am responsible for tracking the costs for the Frontier Chemical Royal Avenue Phase I PRP Trust Account.
2. Clean Sites acts as administrator for the group fund which was established for payment of the Phase I PRP Group's costs.
3. I can provide an accounting of monies received and spent for the Phase I Group.

4. The Frontier Chemical Royal Avenue Phase I Group has spent a total of \$3,369,481.17 for Phase I expenses. (See trust account statement, attached hereto as Exhibit A.) Of this total amount, \$2,313,283.86 is attributable to cleanup contractor costs and \$1,056,197.31 is attributable to administrative expenses.



Carol D. Quin

Subscribed and sworn to before me
this 10th day of September, 1996



Notary Public

My Commission Expires November 30, 1999

FINANCIAL STATEMENT OF EXPENDITURES FOR FRONTIER CHEMICAL PHASE 1 PRP TRUST ACCOUNT

FRONTIER SITE PHASE 1 - ADMINISTRATIVE ACCOUNT

	Date	Expenses	
Dec. 93	12/3	\$615.98	Chk #1002 - Duke Holzman
	12/3	\$384.55	Chk #1003 - Gardner Carton & Douglas
	12/3	\$1,114.88	Chk #1001 - Davidoff & Burrasca
Jan. 94	1/12	\$3,554.42	Chk #1004 - Kerby Cooper English
	1/12	\$423.22	Chk #1005 - Gardner Carton & Douglas
	1/14	\$27.89	Chk #1006 - Gardner Carton & Douglas
	1/21	\$413.25	Chk #1007 - Davidoff & Burrasca
Feb. 94	2/2	\$319.88	Chk #1008 - Davidoff & Burrasca
Apr. 94	4/27	\$1,752.59	Chk #1009 - Davidoff & Burrasca
Jun. 94	6/2	\$83.91	Chk #1010 - Gardner Carton & Douglas
	6/20	\$608.84	Chk #1012 - Duke Holzman
	6/20	\$409.91	Chk #1011 - Davidoff & Burrasca
	6/20	\$85.78	Chk #1013 - Gardner Carton & Douglas
Jul. 94	7/29	\$667.93	Chk #1014 - Gardner Carton & Douglas
Oct. 95	10/10	\$7,243.70	Chk #1015 - Cooper Rose & English
		=====	
		\$17,706.73	

FRONTIER SITE PHASE 1 - DRUM REMOVAL ACCOUNT

	Date	Expenses		Cleanup Exp.
Dec. 93	12/3	\$221,867.41	Chk #91 - Environmental Waste Technology Inc.	\$221,867.41
Jan. 94	1/4	\$239,334.44	Chk #92 - Environmental Waste Technology Inc.	\$239,334.44
	1/25	\$278,934.59	Chk #93 - Environmental Waste Technology Inc.	\$278,934.59
	1/26	\$555,668.86	Chk #96 - Environmental Waste Technology Inc.	\$555,668.86
	1/27	\$22,937.78	Chk #94 - GEMCHEM, Inc.	\$22,937.78
Apr. 94	4/1	\$42,582.40	Chk #99 - Clean Sites	
	4/6	\$13,959.24	Chk #98 - GEMCHEM	\$13,959.24
	4/8	\$2,350.77	Chk #97 - Environmental Project Control	\$2,350.77
	4/20	\$105,200.00	Chk #100 - Laidlaw Environmental Services	\$105,200.00
Jul. 94	7/22	\$16,497.03	Chk #101 - Environmental Project Control	\$16,497.03
	7/22	\$6,447.14	Chk #102 - Goodwin, Procter & Hoar	
	7/25	\$3,552.86	Chk #103 - Petree Stockton, L.L.P.	
Aug. 94	8/09	\$51,416.31	Chk #104 - Laidlaw Environmental Services	\$51,416.31
	8/09	\$23,633.12	Chk #105 - Conestoga-Rovers & Associates	\$23,633.12
	8/17	\$56,061.08	Chk #106 - Clean Sites, Inc.	
	8/22	\$30,042.13	Chk #108 - Conestoga-Rovers & Associates	\$30,042.13
	8/23	\$22,976.81	Chk #107 - Laidlaw Environmental Services	\$22,976.81
	8/24	\$13,555.00	Chk #109 - Environmental Project Control	\$13,555.00
Sep. 94	9/06	\$77,997.58	Chk #110 - Laidlaw Environmental Services	\$77,997.58
Oct. 94	10/7	\$8,909.58	Chk #114 - Purolater Products	
	10/7	\$2,047.77	Chk #116 - CCI Custom Manufacturing	
	10/11	\$18,363.91	Chk #118 - Delta Rubber	
	10/11	\$14,425.76	Chk #113 - Peerless Winsmith	
	10/12	\$50,281.61	Chk #111 - Loral Defense Systems	
	10/14	\$6,976.09	Chk #117 - Tivoly, U.S.A.	
Jan. 95	1/9	\$234,087.09	Chk #120 - Laidlaw Environmental Services	\$234,087.09
	1/11	\$4,464.13	Chk #119 - Renold, Inc.	
	1/18	\$88,078.80	Chk #121 - Clean Sites, Inc.	
	1/30	\$12,099.83	Chk #123 - Conestoga-Rovers & Associates	\$12,099.83

Exhibit A

EXHIBIT A

FINANCIAL STATEMENT OF EXPENDITURES FOR FRONTIER CHEMICAL PHASE 1 PRP TRUST ACCOUNT

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*****
Jun. 95  1/30      $7,561.65      Chk #122 - Environmental Project Control      $7,561.65
Jun. 95  6/9       $12,914.00     Chk #124 - Meade Packaging
Jul. 95  7/17      $3,045.28      Chk #125 - Hyatt Regency Buffalo
              7/27      $9,870.03      Chk #126 - Bus Industries of America
Aug. 95  8/3       $22,962.86     Chk #127 - Vac Aero, Inc.
Sep. 95  9/20      $9,604.69      Chk #128 - Clean Sites, Inc.
Oct. 95  10/11     $113.45        Chk #130 - Environmental Project Control      $113.45
              10/18     $2,166.44      Chk #129 - Laidlaw Environmental Services      $2,166.44
Nov. 95  11/07    $519,219.03    Chk #133 - U.S. EPA
Dec. 95  12/05     $5,130.76      Chk #134 - Clean Sites, Inc.
              $22,341.01    Chk #135 - Conestoga-Rovers & Associates      $22,341.01
              $41,762.66    Chk #131 - Nixon, Hargrave, Devans & Doyle
              $31,531.15    Chk #139 - Nixon, Hargrave, Devans & Doyle
              $8,652.88     Chk #132 - Nixon, Hargrave, Devans & Doyle
              $2,631.27    Chk #140 - Orion Management
Jan. 96  1/3       $12,532.18     Chk #136 - Environmental Project Control      $12,532.18
              1/16     $341,958.33    Chk #141 - Laidlaw Environmental Services      $341,958.33
May 96   5/8       $38,817.74     Chk #145 - Nixon, Hargrave, Devans & Doyle
              5/8       $528.02        Chk #142 - Clean Sites, Inc.
              5/14      $93.88         Chk #144 - Environmental Project Control      $93.88
              5/15      $1,775.40      Chk #146 - Orion Management
              5/16      $3,958.93      Chk #143 - Conestoga-Rovers & Associates      $3,958.93
Jul. 96  7/11      $7,978.36      Chk #147 - Clean Sites, Inc.
Aug. 96  8/27     $19,875.32     Chk #148 - Nixon, Hargrave, Devans & Doyle

=====
$3,351,774.44 -----> total expenses from Removal Fund      $2,313,283.86  CLEANUP EXPENSES
$17,706.73 -----> total expenses from Admin. Fund

=====
$3,369,481.17      Total Expenses      $1,056,197.31  OTHER EXPENSES

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Exhibit G

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

STATE OF NEW YORK AND THOMAS C. JORLING,
as Commissioner of the New York State
Department of Environmental Conservation,
FRONTIER CHEMICAL ROYAL AVENUE PHASE I
POTENTIALLY RESPONSIBLE PARTIES GROUP
and FRONTIER CHEMICAL ROYAL AVENUE
PHASE II POTENTIALLY RESPONSIBLE PARTIES
GROUP,

AFFIDAVIT OF
DAVID L. COOK

Plaintiffs,

vs.

Index No. 13732-93

ACSTAR INSURANCE COMPANY as Guarantor
for Frontier Chemical Waste Process,
Inc., and Eagle Vision Environmental
Corporation, Inc.

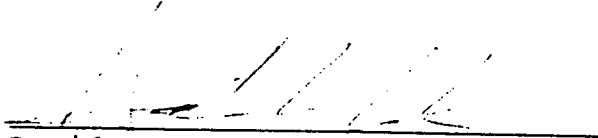
Defendant.

David L. Cook, Esq. being duly sworn, deposes and says that:

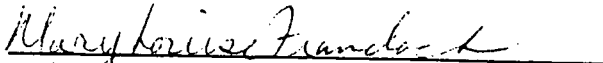
1. I am a member of the firm of Nixon, Hargrave, Devans & Doyle, and the Common Counsel to the Frontier Chemical Royal Avenue Phase I PRP Group Executive Committee.
2. The Frontier Chemical Royal Avenue Phase I Potentially Responsible Parties Group ("Phase I PRP Group") was ordered to perform a Phase I Removal Action at the Frontier Chemical Royal Avenue Site at 4626 Royal Avenue, Niagara Falls, New York (the "Site") pursuant to U.S.E.P.A. Administrative Order on Consent for Removal Action (Index No. II-CERCLA-93-0207) issued on September 30, 1993.
3. Pursuant to unanimous agreement of the members of the Phase I PRP Group, I was appointed as Common Counsel to the

Frontier Chemical Avenue Phase I PRP Group Executive Committee and act as an administrator to the group.

4. In performing the Phase I Removal Action, the Phase I PRP Group spent a total of \$3,369,481.17. (See group fund statement, attached hereto as Exhibit A) Of this total amount, \$2,313,283.86 is attributable to actual facility closure and post-closure removal costs and \$1,056,197.31 is attributable to related administrative expenses.


David L. Cook, Esq.

Subscribed and sworn to before me
this 12th day of September, 1996


Notary Public

MARY LOUISE FIANDACH
Notary Public, State of New York
No. 01F14606228
Qualified in Mendon, Vermont Certificate
Filed in Mendon County
Commission Expires Nov. 30, 1997

FINANCIAL STATEMENT OF EXPENDITURES FOR FRONTIER CHEMICAL PHASE 1 PRP TRUST ACCOUNT

FRONTIER SITE PHASE 1 - ADMINISTRATIVE ACCOUNT

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Apr. 94	4/27	\$1,752.59	Chk #1009 - Davidoff & Burrasca
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	6/20	\$409.91	Chk #1011 - Davidoff & Burrasca
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		\$17,706.73	

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Apr. 94	4/1	\$42,582.40	Chk #99 - Clean Sites	
	4/6	\$13,959.24	Chk #98 - GEMCHEM	\$13,959.24
	4/8	\$2,350.77	Chk #97 - Environmental Project Control	\$2,350.77
	4/20	\$105,200.00	Chk #100 - Laidlaw Environmental Services	\$105,200.00
Jul. 94	7/22	\$16,497.03	Chk #101 - Environmental Project Control	\$16,497.03
	7/22	\$6,447.14	Chk #102 - Goodwin, Procter & Hoar	
	7/25	\$3,552.86	Chk #103 - Petree Stockton, L.L.P.	
Aug. 94	8/09	\$51,416.31	Chk #104 - Laidlaw Environmental Services	\$51,416.31
	8/09	\$23,633.12	Chk #105 - Conestoga-Rovers & Associates	\$23,633.12
	8/17	\$56,061.08	Chk #106 - Clean Sites, Inc.	
	8/22	\$30,042.13	Chk #108 - Conestoga-Rovers & Associates	\$30,042.13
	8/23	\$22,976.81	Chk #107 - Laidlaw Environmental Services	\$22,976.81
	8/24	\$13,555.00	Chk #109 - Environmental Project Control	\$13,555.00
Sep. 94	9/06	\$77,997.58	Chk #110 - Laidlaw Environmental Services	\$77,997.58
Oct. 94	10/7	\$8,909.58	Chk #114 - Purolater Products	
	10/7	\$2,047.77	Chk #116 - CCL Custom Manufacturing	
	10/11	\$18,363.91	Chk #118 - Delta Rubber	
	10/11	\$14,425.76	Chk #113 - Peerless Winsmith	
	10/12	\$50,281.61	Chk #111 - Loral Defense Systems	
	10/14	\$6,976.09	Chk #117 - Tivoly, U.S.A.	
Jan. 95	1/9	\$234,087.09	Chk #120 - Laidlaw Environmental Services	\$234,087.09
	1/11	\$4,464.13	Chk #119 - Renold, Inc.	
	1/18	\$88,078.80	Chk #121 - Clean Sites, Inc.	
	1/30	\$12,099.83	Chk #123 - Conestoga-Rovers & Associates	\$12,099.83

Exhibit A

FINANCIAL STATEMENT OF EXPENDITURES FOR FRONTIER CHEMICAL PHASE 1 PRP TRUST ACCOUNT

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Jul. 95  7/17       $3,045.28   Chk #125 - Hyatt Regency Buffalo
          7/27       $9,870.03   Chk #126 - Bus Industries of America
Aug. 95  8/3       $22,962.86  Chk #127 - Vac Aero, Inc.
Sep. 95  9/20      $9,604.69   Chk #128 - Clean Sites, Inc.
Oct. 95  10/11     $113.45     Chk #130 - Environmental Project Control      $113.45
          10/18     $2,166.44   Chk #129 - Laidlaw Environmental Services     $2,166.44
Nov. 95  11/07    $519,219.03 Chk #133 - U.S. EPA
Dec. 95  12/05     $5,130.76   Chk #134 - Clean Sites, Inc.
          12/05     $22,341.01  Chk #135 - Conestoga-Rovers & Associates     $22,341.01
          12/05     $41,762.66   Chk #131 - Nixon, Hargrave, Devans & Doyle
          12/05     $31,531.15   Chk #139 - Nixon, Hargrave, Devans & Doyle
          12/05     $8,652.88    Chk #132 - Nixon, Hargrave, Devans & Doyle
          12/05     $2,631.27   Chk #140 - Orion Management
Jan. 96  1/3       $12,532.18  Chk #136 - Environmental Project Control      $12,532.18
          1/16     $341,958.33  Chk #141 - Laidlaw Environmental Services     $341,958.33
May 96   5/8       $38,817.74   Chk #145 - Nixon, Hargrave, Devans & Doyle
          5/8       $528.02     Chk #142 - Clean Sites, Inc.
          5/14      $93.88      Chk #144 - Environmental Project Control      $93.88
          5/15     $1,775.40   Chk #146 - Orion Management
          5/16     $3,958.93   Chk #143 - Conestoga-Rovers & Associates     $3,958.93
Jul. 96  7/11     $7,978.36   Chk #147 - Clean Sites, Inc.
Aug. 96  8/27     $19,875.32  Chk #148 - Nixon, Hargrave, Devans & Doyle

=====
$3,351,774.44 ----> total expenses from Removal Fund      $2,313,283.86 CLEANUP EXPENSES
$17,706.73 ----> total expenses from Admin. Fund

=====
$3,369,481.17      Total Expenses      $1,056,197.31 OTHER EXPENSES

```

Exhibit H

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

STATE OF NEW YORK, THOMAS C. JORLING,
as Commissioner of the New York State
Department of Environmental Conservation,
FRONTIER CHEMICAL ROYAL AVENUE PHASE I
PRP GROUP and FRONTIER CHEMICAL ROYAL
AVENUE PHASE II PRP GROUP,

AFFIDAVIT

Plaintiffs,

vs.

ACSTAR INSURANCE COMPANY

Fredric S. Jakes, being duly sworn, deposes and says that:

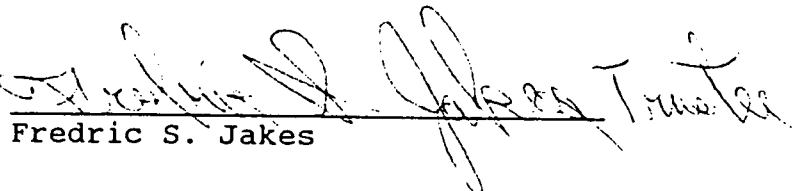
1. I, Fredric S. Jakes, President of Solvents and Petroleum Service, along with Carl J. Johnson, Chief Executive Officer of II-VI, Inc., am a trustee of the Frontier Chemical Royal Avenue Phase II PRP Group trust account.

2. The Frontier Chemical Royal Avenue Phase II Potentially Responsible Parties Group ("Phase II PRP Group") was ordered to perform a Phase II Removal Action at the Frontier Chemical Royal Avenue Site at 4626 Royal Avenue, Niagara Falls, New York (the "Site") pursuant to U.S.E.P.A. Administrative Order on Consent for Removal Action (Index No. II-CERCLA-94-0205) issued on July 5, 1994.

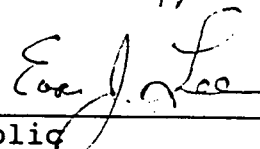
3. Pursuant to unanimous agreement of the members of the Phase II PRP Group, Mr. Johnson and I were appointed as trustees of the Phase II PRP Group's trust account which was established to fund the Phase II PRP Group's costs of performing the facility closure and post-closure Phase II Removal Action.

4. As a trustee, I act an administrator of the group trust account and can provide an accounting of monies received, spent and obligated.

5. In performing the facility closure and post-closure Phase II Removal Action, the Phase II PRP Group spent a total of \$3,167,422.00. (See trust account statement, attached hereto as Exhibit A) Of this total amount, \$2,718,177.60 is attributable to actual facility closure and post-closure removal costs and \$449,244.40 is attributable to related administrative expenses.


Fredric S. Jakes

Subscribed and sworn to before me
this 9th day of September, 1996



Notary Public

EVA J. LEE

Notary Public in the State of Florida
Qualified in Orange County 11/1/95
My Commission Expires November 10, 1997

TRUST ACCOUNT STATUS
(in support of Trustees' Affidavit)

Blasland, Bouck & Lee/Cranbury Remediation	\$2,718,177.60
Nixon, Hargrave, Devans & Doyle LLP (technical and administration)	194,755.12
Patton Boggs	216,160.71
Mengel, Metzger, Barr & Co.	4,813.79
Environmental Protection Agency	26,947.00
TLI	3,956.79
Orion	2,631.28
<hr/>	
TOTAL <u>all</u> Expenditures	\$3,167,422.00
<u>Less</u> BB&L/Cranbury Remediation Cost	2,718,177.60
<hr/>	
TOTAL Administrative Expenses	\$449,244.40

Exhibit I

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

STATE OF NEW YORK, THOMAS C. JORLING,
as Commissioner of the New York State
Department of Environmental Conservation,
FRONTIER CHEMICAL ROYAL AVENUE PHASE I
PRP GROUP and FRONTIER CHEMICAL ROYAL
AVENUE PHASE II PRP GROUP,

AFFIDAVIT

Plaintiffs,

vs.

ACSTAR INSURANCE COMPANY

Carl J. Johnson, being duly sworn, deposes and says that:

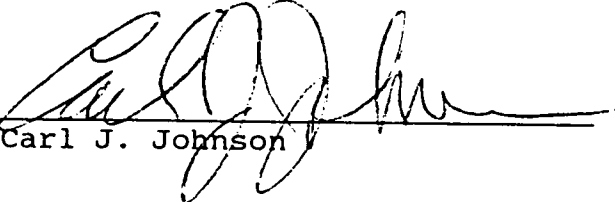
1. I, Carl J. Johnson, Chief Executive Officer of II-VI, Inc., along with Frederick S. Jakes, President of Solvents and Petroleum Service, am a trustee of the Frontier Chemical Royal Avenue Phase II PRP Group trust account.

2. The Frontier Chemical Royal Avenue Phase II Potentially Responsible Parties Group ("Phase II PRP Group") was ordered to perform a Phase II Removal Action at the Frontier Chemical Royal Avenue Site at 4626 Royal Avenue, Niagara Falls, New York (the "Site") pursuant to U.S.E.P.A. Administrative Order on Consent for Removal Action (Index No. II-CERCLA-94-0205) issued on July 5, 1994.

3. Pursuant to unanimous agreement of the members of the Phase II PRP Group, Mr. Jakes and I were appointed as trustees of the Phase II PRP Group's trust account which was established to fund the Phase II PRP Group's costs of performing the facility closure and post-closure Phase II Removal Action.

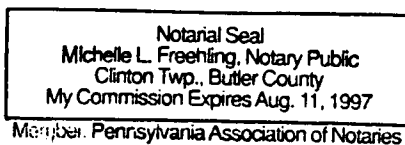
4. As a trustee, I act as an administrator of the group trust account and can provide an accounting of monies received, spent and obligated.

5. In performing the facility closure and post-closure Phase II Removal Action, the Phase II PRP Group spent a total of \$3,167,422.00. (See trust account statement, attached hereto as **Exhibit A**) Of this total amount, \$2,718,177.60 is attributable to actual facility closure and post-closure removal costs and \$449,244.40 is attributable to related administrative expenses.


Carl J. Johnson

Subscribed and sworn to before me
this 4th day of September, 1996


Notary Public



TRUST ACCOUNT STATUS
(in support of Trustees' Affidavit)

Blasland, Bouck & Lee/Cranbury Remediation	\$2,718,177.60
Nixon, Hargrave, Devans & Doyle LLP (technical and administration)	194,755.12
Patton Boggs	216,160.71
Mengel, Metzger, Barr & Co.	4,813.79
Environmental Protection Agency	26,947.00
TLI	3,956.79
Orion	2,631.28
<hr/>	
TOTAL <u>all</u> Expenditures	\$3,167,422.00
<u>Less</u> BB&L/Cranbury Remediation Cost	2,718,177.60
<hr/>	
TOTAL Administrative Expenses	\$449,244.40

Exhibit J

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL REMEDIATION
BUREAU OF PROGRAM MANAGEMENT

***** QUARTERLY STATUS REPORT *****

FISCAL SUMMARY REPORT
P A R T - 3

STATE FUNDS ONLY

Site ID	Site Name	C L A	Contract Amounts	Expended Thru- 10/1/98
9-32-081	Griffon Park	D	\$157,441	\$157,441
9-32-083	New Road	D	\$131,427	\$131,427
9-32-084A	97th St. Methodist Church	D	\$109,474	\$109,474
9-32-085A	64th Street - North	D	\$176,582	\$176,582
9-32-085B	64th Street - South	D	\$4,800	\$4,800
9-32-089	Niagara Town Landfill	3	\$3,500	\$3,500
9-32-090	Niagara Frontier Transportation Auth.	D	\$65,924	\$65,924
9-32-091A	Power Authority Road Site	D	\$4,300	\$4,300
9-32-091B	PASNY Upper Mountain Rd. site	D	\$3,500	\$3,500
9-32-092	Royalton Town Landfill	0	\$84,410	\$84,410
9-32-094	Lockport Road - Struzik Property	0	\$82,135	\$82,135
9-32-096	Solvent Chemical	2	\$798,242	\$798,242
9-32-097	Forest Glen Subdivision	2	\$625,500	\$314,500
9-32-099	Schreck's Scrapyard	4	\$2,596,775	\$2,596,775
9-32-100	Booth Oil Co.	2	\$766,341	\$766,341
9-32-101	Waimore Road - Johnson Property	D	\$99,426	\$99,426
9-32-110	Frontier Chemical - Royal Avenue	2	\$6,375	\$1,134
9-61-001	Formso (formerly Chaffee & Pagano)	D	\$148,457	\$148,457
9-61-005	ETE Sanitation and Landfill	2	\$411,099	\$267,577
9-61-006	Warsaw Village Landfill	3	\$165,040	\$165,040
9-61-008	Robeson Industries, Inc.	2	\$1,054,785	\$726,820

← and do date

Exhibit K

Affidavit of Kevin Matheis, Sworn to December 6, 1996.

STATE OF NEW YORK : COUNTY OF ERIE
SUPREME COURT

STATE OF NEW YORK, THOMAS C. JORLING, as
Commissioner of the New York State Department
of Environmental Conservation,
FRONTIER CHEMICAL ROYAL AVENUE PHASE I PRP
GROUP and
FRONTIER CHEMICAL ROYAL AVENUE PHASE II
PRP GROUP,

AFFIDAVIT OF
KEVIN MATHEIS

Index No. 13732-93

Plaintiffs,

-vs-

ACSTAR INSURANCE COMPANY as Guarantor for
Frontier Chemical Waste Process, Inc. and
Eagle Vision Environmental Corporation, Inc.,

Defendant.

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:
CITY OF BUFFALO)

KEVIN MATHEIS, being duly sworn, deposes and says:

1. I am presently employed as an On-Scene Coordinator ("OSC") with the Removal Action Branch of the Emergency and Remedial Response Division of the United States Environmental Protection Agency ("EPA") Region II, Woodbridge Avenue, Edison, New Jersey and have held this position since May 1990. From December 1992 to May 1995, I was EPA's OSC for the Frontier Chemical Site located at 4626 Royal Avenue in Niagara Falls, New York.

2. I received a Bachelor of Science degree in Geosciences from the State University College at Buffalo in 1988. I have completed numerous EPA-conducted courses and seminars in areas related to hazardous substances management,

Affidavit of Kevin Matheis, Sworn to December 6, 1996.

including: a 240-hour training program at the EPA OSC/RPM Training Academy in hazardous materials management, contract administration, enforcement and negotiations; 80 hours of Health and Safety training; and 24 hours of training in United States Department of Transportation packaging requirements for transportation of hazardous materials. I also have attended several conferences on hazardous materials management and incident response.

3. My responsibilities as an OSC are to coordinate, oversee, and direct removal or other response actions conducted under Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300. These regulations establish, among other things, the procedures for responding to releases and threatened releases into the environment of hazardous substances, pollutants, and contaminants that may present an imminent and substantial danger to public health and welfare, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9601 et seq.

4. My duties as OSC for the Frontier Site included directing, coordinating and overseeing EPA's removal action with respect to the Site. I am very familiar with the Site and with the response activities selected by EPA for the Site. Pursuant to USEPA Administrative Orders on Consent Index No.'s II-CERCLA-93-0207, issued on September 30, 1993, and II-CERCLA-94-0205, issued on July 5, 1994, the Phase I and Phase II PRP Groups undertook response activities related to, respectively, drummed and tanked hazardous substances at the Site. See

Affidavit of Kevin Matheis, Sworn to December 6, 1996.

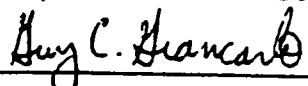
9/13/96 affidavit of William Stephens, Exhibits F and I.

5. These PRP-funded and implemented response activities at the Frontier Site included the following: all drums containing wastes were prepared and shipped off-site to appropriate facilities, and the secondary containment areas (concrete platforms with berms) where the drums were located were decontaminated with high pressure hot water spray. The various hazardous waste storage and treatment systems (oxidation, blended fuels, and wastewater treatment) which contained bulk waste had their wastes removed off-site for disposal, their steel tanks cleaned to bare metal, their fiberglass tanks high pressure rinsed, their pipes cleaned or disassembled and removed, and their secondary containment areas decontaminated.

6. I have reviewed the closure plan for the Frontier Chemical Royal Avenue Site attached as Exhibit 1 to the December 5, 1996 affidavit of Frank Shattuck. Based upon my review of the same and my personal knowledge of the response activities described in paragraph 5 above, those above-described PRP-funded and implemented response activities were consistent with and effectively performed the closure tasks required for containers and tanks as described in said closure plan.


KEVIN MATHEIS

Sworn to before me this
6th day of December 1996


Guy C. Giancarlo
Notary Public, State of New York
Qualified in Erie County 6/15/97
My Commission Expires

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PRINTERS AND STATIONERS TO THE LEGAL PROFESSION

Exhibit L

RAICHLE, BANNING, WEISS & STEPHENS

ATTORNEYS AT LAW

410 MAIN STREET - BUFFALO, NEW YORK 14202-3702

TELEPHONE: (716) 852-7587

TELECOPIER: (716) 852-7599

December 1, 1999

John P. Cahill, Commissioner
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, NY 12233

Re: Frontier Chemical Royal Avenue Site
Site # 932110
Demand for reimbursement of Closure Costs

Dear Commissioner Cahill:

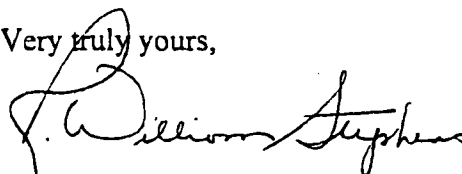
As you are aware from previous correspondence this firm represents two PRP Groups who have expended in excess of six million dollars in a closure action ordered and administered by the Environmental Protection Agency.

In June, 1999 as a result of legal action, you as Trustee, received proceeds of a bond posted to cover closure costs at the site by the owner operator Frontier Chemical Corporation. The amount of these funds now exceeds \$2,500,000.00 and although my clients have repeatedly requested reimbursement from these funds, no payment has been forthcoming.

The State of New York has incurred closure costs of less than two thousand dollars. The EPA has a claim of between \$200,000 and \$300,000 for oversight costs on closure. As certified in an affidavit of the EPA On-Site Coordinator or at the Site, closure is now complete.

DEMAND IS HEREBY MADE UPON YOU to pay over to my clients at least the sum of \$2,200,000.00 as partial reimbursement for closure costs forthwith. Your failure to promptly do so will result in an action against you for declaratory judgment.

Very truly yours,



R. William Stephens

RAICHLE, BANNING, WEISS & STEPHENS

ATTORNEYS AT LAW

410 MAIN STREET - BUFFALO, NEW YORK 14202-3702

TELEPHONE: (716) 852-7587

TELECOPIER: (716) 852-7599

December 1, 1999

Honorable Eliot L. Spitzer
Attorney General
State of New York
120 Broadway - 25th Floor
New York, NY 10271

Re: Frontier Chemical Royal Avenue Site
Site # 932110
Demand for reimbursement of Closure Costs

Dear General Spitzer:

This firm represents two PRP Groups who have expended in excess of six million dollars in performing closure at the above referenced site ordered and administered by the Environmental Protection Agency (EPA).

In June, 1999 as a result of legal action by your office and my clients, funds were deposited in an escrow account of the Attorney General of New York State which are the proceeds of a performance bond for closure posted by the owner operator of the site. These funds are for the specific purpose of providing funds for facility closure. The amount of the funds with interest now totals over \$2,500,000.

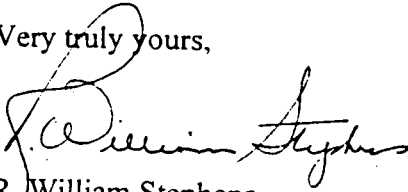
My clients have repeatedly requested reimbursement from these funds through your Assistant Attorney General of the Buffalo office and from the Commissioner of the New York State Department of Environmental Conservation without success.

The State of New York has incurred closure costs of less than two thousand dollars. The EPA has a claim of between \$200,000 and \$300,000 for oversight costs on closure. As certified in an affidavit of the EPA On-Site Coordinator at the Site, closure is now complete.

DEMAND IS HEREBY MADE UPON YOU to pay over to my clients, Frontier Chemical Royal Avenue Phase I and Phase II PRP Groups, the sum of at least \$2,200,000 as partial reimbursement for closure costs forthwith. Your failure to do so will result in an action

against you for declaratory judgment.

Very truly yours,



R. William Stephens

RWS\jdp

cc: Assistant Attorney General Timothy Hoffman

Z:\env\acstar\demand letter to attorney general.wpd